

**Minutes of a Meeting
of the
Performance Based Procurement System Task Force**

**April 26, 2000
1:00 p.m.**

ATTENDANCE

Joe Jenkins	Alan Bachman
David Adams	Neil Spencer
Richard Byfield	Jim Paull
Kay Waxman	Tim Whittaker
Lonnie Bullard	Frank Child
Daniel Kohler	Lynn Hinrichs
Jim Oberndorfer	Jim Smith
Gary Smith	Matthias Mueller
Elizabeth Mitchell	Dale Brinkerhoff
Robert Bergman	Shannon Lofgreen

INTRODUCTION

Chairman Adams of the Utah State Building Board convened the meeting of the task force and stated the intent of the task force is to deliberate the most effective way to implement the performance-based procurement system (PBPS) within the architect/engineer and contracting communities. Several people from different entities were invited by the Building Board to serve on the task force.

Joe Jenkins of the Building Board will chair the task force. Mr. Jenkins introduced the task force members and stated other members of the Building Board would try to be present for the deliberations, as it will be their action that will incorporate a PBPS policy.

SUMMARY OF THE PERFORMANCE-BASED PROCUREMENT SYSTEM THEORY

Mr. Richard E. Byfield, Director of the Division of Facilities Construction and Management (DFCM), stated DFCM has piloted approximately one dozen procurements through the design/build process. A hearing was conducted to analyze the issues of PBPS and discuss the merits and challenges of improving upon the low-bid process and as a result it was determined to develop the task force. He stated DFCM is grateful of the time commitment the task force members have made to the process and DFCM staff will be available to aid the task force at their convenience. The task force will have a great opportunity to develop awareness on the issue and the task force's recommendation and the Building Board's decision will impact DFCM policy.

Richard Byfield reviewed the PBPS theory with the task force. A copy of this presentation is attached.

DFCM has procured some projects through PBPS and has had varied experiences. Upon receiving concerns about PBPS from the construction community, the Utah State Building Board evaluated the system and decided to hold a rule-making meeting to determine a type of performance based procurement system. Upon the development of a procedure, the rule-making process will continue and take approximately 30 days, including notification for public commentary. The Building Board anticipates holding the rule-making meeting in September, in order to adopt the rule by October. Mr. Jenkins suggested the task force meet biweekly, possibly on Thursdays, in order to meet the objective.

Mr. Jenkins further noted a common consensus the low-bid system is ineffective. He stated his desire was for DFCM not go back to low-bid procurement. He also cautioned the task force is not required to adopt Dr. Kashiwagi's system, but rather suggest a new state policy after evaluating the options of determining the best performers. It is Mr. Jenkins' belief there should be a system to grade weighted factors and the task force should debate those weights.

Jim Smith, a representative of the Utah Roofing Contractors Association (URCA) submitted the quality of the product used should be also rated. A project could be awarded to the best contractor for the best price, but if the product is not of quality, it may not matter. This led Joe Jenkins to question how best value is to be determined and if the task force could make a rule-based determination that works with the projects.

Elizabeth Mitchell ~~Kay Waxman~~ asked if the goal of the task force is to recommend a procurement system that applies to all participants in the selection process including architects and engineers or was there a possibility some of the selection processes be separated. Joe Jenkins noted the construction industry seemed to be more amenable to PBPS than architects and engineers. At this point, no one will be opted out of the procurement process unless the task force determines a mode of procurement will not work for a particular discipline.

Dan Kohler commented if A/E's are required to enter into the same procurement process as contractors, it is important to make the current distinction between A/E selection and contractor selection. A/E's have been selected by performance-based methods for the last twenty years and used the process commonly called Qualifications Based Selection (QBS). Joe Jenkins expressed his desire to develop a system that could be uniformly applied to all bidders.

Mr. Jenkins conceded he has heard comments that the PBPS evaluation system is flawed and there have been suggestions scores are dishonest, reflecting favors and non-performance. He felt an objective method of measurement would need to be determined with a grading system protected from the impacts of bribes. The current measurement is based on a numeric scale; however, the scale has become top-heavy as most firms are being rated at nine or ten. Due to the debate on the definition of PBPS, it was stressed to develop a common term to

use for the sake of proceedings. Alan Bachman, counsel for DFCM, suggested using the term 'value-based' for proceedings, because it is not necessarily the highest performer that will be selected, but the entity who will offer the best value.

Mr. Jenkins mentioned the Utah State Building Board is committed to giving the citizens of the State of Utah the best value. There may be firms, because of size, lack of experience, or a bad experience, which should not be part of the process. The task force will need to determine if it is the prerogative of the Building Board to dictate the process being open to everyone in the State of Utah or the process should only be open to those who have exhibited good value as measured by past performance.

Mr. Bachman added it is in the discretion of the DFCM director to use a request for proposal (RFP) process for construction. DFCM is restricted when it comes to A/E's, as negotiation is mandatory to select a firm since statute mandates DFCM cannot use a fee-based process.

Joe Jenkins stated the PBPS task force must also develop a management plan process. The current system consists of DFCM requiring interested firms to submit a management plan and then a selection board would be convened to read and evaluate the management plan. This is a blind process, barring committee members the knowledge of the participating firms. Management plans are evaluated on the basis and consistency of the plan, and the probability of a successful project. Once the management plans are reviewed, the selection committee invites the predetermined short-listed firms to make a presentation. This discussion and evaluation consists of who has the best management plan to see the project through to completion to ensure best value. There have been several complaints stating it is costly for firms to compile a management plan and only the larger firms are capable of providing this cost. Mr. Jenkins disagreed and felt, from personal experience, some of the best management plans were presented by small firms.

Mr. Kohler express the sequencing of subcontractors in advance of the presentation is important. It allows small firms to participate in writing management plans. Short-listing firms at an inappropriate time inhibits upstart performing firms.

In the analysis of the management plan, the State of Utah is required to immerse itself in the process. The communication currently existing is one of the best aspects of management plan selection. Turning the selection rating to other firms may not be the most beneficial.

Ms. Elizabeth Mitchell noted both positive and negative commentary has been made about management plans before or after short-listing. The AIA believes management plans are a good exercise.

Mr. Neil Spencer commented it takes a tremendous amount of time to produce a management plan. His firm spent \$7,000 in efforts of obtaining a PBPS project, which they did not receive. If the firm had received the contract, it would have been 10% of their total fee, which is uncommon for a general contractor to spend 10% of a project budget preparing a management plan.

Mr. Bachman commented he received a favorable review of the management plan when meeting with the AIA. Nevertheless, it was discussed it is important to have more specific definitions of what is to be contained in a management plan. The only other option of shortening the management plan selection process is to go through a short-list procedure. If the process is opened to every firm, the scope the management plan is should be narrowed down.

Mr. Jenkins mentioned it would be advisable for DFCM to come up with guidelines for producing a management plan. Some management plans are very elaborate, bordering on a marketing plan, however it needs to be complete and flexible enough to aid the selection committee in rendering a decision as well as demonstrate a firm's uniqueness and distinction.

Mr. Byfield DFCM needs to educate firms to ensure a common understanding. After two or three management plans, there will be enough knowledge and reference to reduce the cost of producing a management plan. Mr. Byfield cautioned against placing barriers against a more creative way to handle the problem. The task force needs to find a way to develop a basis for making a legitimate judgement on all of the values they are trying to obtain on the predetermined scale.

Mr. Jenkins commented the team approach between the owner and the suppliers is one of the aspects he likes best of PBPS, whereas each participant is evaluated on the team approach. However, this has caused some confusion between general contractors who felt if they selected the subcontractors with the best barcodes, they would be advantaged in getting the job. This perception is not a representation of who is the best subcontractor as some of the subcontractors with the best barcode numbers bid high on projects. Mr. Bachman added architects tend to like the management plan concept because it allows an new architect to the community or to a type of project to prove themselves through the management plan and the interview.

Mr. Ballard stated his belief is a general contractor should be involved in the competitive environment in terms of selection of the team. The general contractor is as much a member of the team as an architect. Mr. Bergman stressed the subcontractors should be listed as part of the team and be included as part of the management plan.

Mr. Dale Brinkerhoff of Southern Utah University, stated everyone present at the hearings had some degree of support in PBPS although some expressed their particular field be removed from selection. He took exception from the idea; stating teamwork is only possible when selection is uniform. The management plan needs to be detailed enough to allow the selection committee to see the project manager is fully aware of every detail in the project. The project manager should scope out a critical path of how a project is to be laid out, phase start dates, and subcontractor assignments, before value engineering. Personal biases should be buried to enable good results to be produced by PBPS.

Mr. Child submitted the State of Utah has a procurement process that keeps general contractors right up-front. A way to get the general contractor up front with the A/E should be discussed.

Mr. Child also submitted prices will jump to include change orders under PBPS. Mr. Byfield commented the cost increases above 4.5% are beyond budget. Therefore, DFCM is getting a better buy when it is controlled.

Mr. Jenkins felt the task force should consider the comments made for discussion at the next meeting on the 18th of May at 1:00 PM, which coincides with a Building Board meeting in the morning. He implored the task force to begin considering ideas to develop a document presentable for a rule making process informing every contractor, owner, and A/E in the State of Utah how to operate in the procurement of contracts. This process will be best organized by the task force spending some time thinking of best value and the weight factors, and incorporating cost, timeliness, performance, usage, maintenance, or other measures within the values. Second, a performance evaluation system needs to be determined by the task force based on a system, which is numerical, completely subjective, or otherwise. Third, the task force needs to discuss the management plan process and how to refine the process. Fourth, the task force should examine a team approach and if there is a way to demonstrate the need for the team approach with all parties involved. Considering the preceding four items will help the task force determine how to proceed.

Mr. Byfield offered to distribute copies of the DFCM procurement code to the task force members.

The meeting adjourned at 3:40pm.

Minutes prepared by: Shannon Lofgreen